IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

S.B.CIVIL WRIT PETITION NO.2133/2003.

UNION OF INDIA & ANR. VS. LABOUR COURT & ANR.

DATE OF ORDER : 17.03.2005.

HON'BLE MR. R.P. VYAS, J.

Mr.Vijay Bishnoi for the petitioner(s).
Mr.Girish Sankhala for the respondent(s).

The instant petition is directed against the judgment and award dated 03.12.2002 (Annexure 4) passed by the, Labour Court, Jodhpur.

Brief facts giving rise to the instant petition are as follows:

The Central Government has made a reference to the Labour Court on 23.12.1990 to the effect that "whether the action of the management of the Sub-Divisional Officer, Phones-II, Jodhpur in terminating the services of Shri Pukhraj Sen i.e. from 31.12.1984 is legal and justified? And if not, to what relief the workman is entitled.

After receiving the reference, the Labour Court has

issued the notices to the parties and the respondent No.2 has submitted the statement of claim (Annex.1) before the Labour Court. The petitioners have submitted a reply to the statement of claim vide Annexure 2.

The Labour Court after hearing the parties, vide order dated 03.12.2002 held that the termination of the respondent No.2 was illegal and ordered to grant 50% back wages from 23.12.1999 i.e. from the date of reference.

Being aggrieved by the judgment and award dated 03.12.2002, the petitioners preferred the present writ petition.

Heard learned counsel for the parties.

The main contention of the learned counsel for the petitioner is that the respondent No.2 was not retrenched, but he himself absented from the duty. The petitioners, thereafter, sent two notices dated 30.10.85 and 07.01.86 to the respondent No.2 by registered post, which were duly served upon him. Despite that, no response was given to the notices. Therefore, there was no fault on the part of the petitioners. It was the fault of the respondent No.2, who himself not appeared despite the service of notices. Thus, it appeared that he himself abandoned the

services and it cannot be said that the respondent No.2 was retrenched from the services.

It is further submitted by the learned counsel for the petitioner that the respondent No.2 has raised the dispute after a period of more than 11 years. In such circumstances, there was no justification to entertain the said reference and the reference should have been dismissed on the ground of delay of more than 11 years.

It is also submitted by the learned counsel for the petitioner that the Labour Court has committed gross error in awarding 50% back wages from the date of reference to the respondent No.2. He, therefore, prayed that the order of the Labour Court may be quashed and set aside.

Learned counsel for the respondent No.2 opposed the submissions made by the learned counsel for the petitioner and supported the impugned order.

I have heard learned counsel for the parties and gone through the impugned judgment passed by the Labour Court.

It is admitted position on record that the respondent No.2 was engaged in the services in the month of October 1983 and he had worked there till December 1984. His services were terminated on 31.12.1984 without following the provisions of the Industrial Disputes Act. During the aforesaid period, the respondent No.2-workman has worked more than 240 days in a calender year and this fact has been established by the Schedule -4, wherein it appeared that he has worked 346 days in a calender year. This fact has also not been controverted before the conciliation officer. The petitioners, in their statements have categorically admitted before the Conciliation Officer that the respondent No.2-workman has worked more than 240 days in a calender year.

So far as the service of the notice on the respondent-workman is concerned, the Labour Court has established this fact that no notice was ever served by the petitioners on the respondent-workman. In any case, if any notice was being served, then the question could be resolved by the witnesses in the cross-examination, but no question regarding service of notice was ever asked in the cross-examination. Therefore, the Labour Court reached on the conclusion that there was no service of the notice as alleged in the reply to the claim petition. Thus, the argument of the learned counsel for the petitioner regarding service of notice on the respondent-workman, has no

force and the same is rejected.

Regarding the delay of more than about 11 years in filing the claim petition, the Labour Court after taking into consideration all the facts and circumstance of the case as well as relying on the judgments of this Court, observed that relief cannot be denied on the ground of delay. Thus, the argument of the learned counsel for the petitioners regarding delay, has no force and the same is rejected.

So far as awarding of 50% back wages from the date of reference is concerned, I do not find any error or illegality in the award passed by the Labour Court. The discretion can be exercised by the Triubnal while passing the award.

Having taking into consideration the contentions raised before me and the material placed alongwith the writ petition, I am of the opinion that no interference is called for by this Court in the award passed by the Labour Court. The Labour Court after judiciously applying its mind to the overall facts and circumstances of the case, has given concrete and specific finding while passing the impugned award.

Apart from that, the power of the High Court under

Article 227 of the Constitution of India is restricted to interference in cases of grave dereliction of duty or flagrant violation of law, and would be exercised most sparingly only in cases where grave injustice has been caused. I do not find any such illegality or irregularity in the impugned award. The Labour Court, after hearing learned counsel appearing for the parties and taking into consideration the material available on record, passed a reasoned and speaking order, which does not call for interference by this Court.

In this view of the matter, the writ petition lacks merits and is liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs.

(R.P.VYAS)J.

Anil